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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA DESANTIS, individually and as)
Successor in Interest for RICHARD)
DESANTIS, deceased, and as Guardian Ad)
Litem for DANI DESANTIS, a minor and)
TIMOTHY FARRELL, a minor,)

Plaintiffs,
v.)

CITY OF SANTA ROSA, JERRY)
SOARES, RICH CELLI, TRAVIS MENKE,)
PATRICIA MANN and DOES 1 through)
25, inclusive,)

Defendants.)

Case No. C07 3386

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

Date: October 12, 2007
Time: 9:00 a.m.
Ctroom: 2, 17th Floor

INTRODUCTION

The defendants have raised two separate issues in their motion to dismiss. First, defendants point out that no affidavit is attached to the complaint to establish Patricia DeSantis status as "successor in interest" as required by C.C.P. § 377.32. Second, the defendants contend that the

1 complaint fails to allege that (1) the decedent's "defacto adopted son" (Timothy Farrell) is the heir of
2 Mr. DeSantis and (2) he lacks standing to assert any causes of action.

3 As to the first issue, on August 31, 2007, a declaration was filed by Patricia DeSantis
4 establishing that she is the appropriate "successor in interest" to pursue this case on behalf of her
5 deceased husband. (See, **Exhibit A** attached for the court's convenience).

6 As to the second issue, C.C.P. § 377.60(c) provides that a wrongful death action may be
7 pursued by a minor if, at the time of the decedent's death, "the minor resided for the previous 180
8 days in the decedent's household and was dependent on the decedent for one-half or more of the
9 minor's support." While the complaint does not specifically allege these facts, the complaint could
10 be amended to allege with more specificity the relationship between the decedent and his "de facto
11 adopted son", Timothy Farrell. The complaint could be amended to allege the following facts:

12 Since the December 18, 1998, marriage of Richard DeSantis and Patricia Farrell DeSantis,
13 Timothy Farrell lived with them and knew Richard DeSantis as his father. Richard DeSantis is not
14 Timothy's biological father, however, Richard DeSantis raised him as his son and he was the
15 primary "breadwinner" in the household from 1998 until his death in April 2007. Timothy resided
16 with his mother and Richard DeSantis for over 8 years prior to the death and Timothy was dependent
17 upon Richard DeSantis for one-half, or more, of his support from 1998 until April 2007. The income
18 earned collectively by Mr. and Mrs. DeSantis was community property. Because of surgery to his
19 leg in 2006 and a bi-polar condition, Richard DeSantis did not work outside the home during the 180
20 days before his death. Rather, he performed child care and household duties for the family while his
21 wife worked outside the home.

22 ARGUMENT

23 Without citation to any authority, the defendant asserts that Timothy Farrell, who has been
24 described as the "de facto adopted son" of the decedent, has no standing to bring a 1983 action for
25 loss of familial relationship. (Motion, 5:17) In fact, Timothy Farrell has clear standing to bring this
26 action, pursuant to California Code of Civil Procedure § 377.60(c). That subsection provides that a
27 cause of action for the death of a person caused by the wrongful act or neglect of another may be

1 asserted by:

2 A minor, whether or not qualified under subdivision (a) or (b), if, at the time of the
3 decedent's death, the minor resided for the previous 180 days in the decedent's household
and was dependent on the decedent for one-half or more of the minor's support.

4 Though § 377.60(c) has not yet been applied in any case similar to this one, subsection (b) of
5 the same statute has been applied in police shooting (and other death) cases brought under § 1983.

6 In *Moreland v. Las Vegas Metro. Police Dept.*, 159 F.3d 365 (9th Cir. 1998), the court held
7 that a particular state's law should be applied in a Section 1983 case to determine who may bring a
8 survival action on behalf of an individual killed as a result of excessive force. The court noted that
9 California law (C.C.P. § 377.60) differed from Nevada law and, in that case, required a different
10 result. *Id.* at 369.

11 In *Foster v. City of Fresno*, 392 F.Supp.2d 1140 (E.D.Cal. 2005), the decedent was shot four
12 times following a police chase. The district court wrote: "The survivors of an individual who is
13 killed as a result of the application of excessive force may assert a Fourth Amendment claim on that
14 individual's behalf if the relevant state's law authorizes a survival action. * * *. A parent may only
15 assert a wrongful death claim if there are no children or issue or if he or she is 'dependent on the
16 decedent.' C.C.P. § 377.60(b). *Id.* at 1145-46. The district court applied C.C.P. 377.60(b) to
17 determine whether certain plaintiffs had standing in a § 1983 action.

18 Similarly, in *Venerable v. City of Sacramento*, 185 F.Supp.2d 1128 (E.D.Cal. 2002), the
19 court applied C.C.P. 377.60(b), and other California statutes (Civ. Pen. Code § §§ 372(a), 377.30,
20 377.33) relating to survival actions, in determining standing in a Section 1983 action arising from a
21 police shooting.

22 All of this authority leads to the conclusion that a plaintiff's standing to assert a wrongful-
23 death type action under 42 U.S.C. § 1983 is governed by state law. The cases cited above apply that
24 principle. Therefore, C.C.P. § 377.60(c) applies to this case. Timothy Farrell has standing under
25 C.C.P. § 377.60(c).

CONCLUSION

Defendants' motion should be denied or the plaintiffs should be granted leave to amend.

Respectfully submitted,

Dated: September 5, 2007

THE SCOTT LAW FIRM

By:

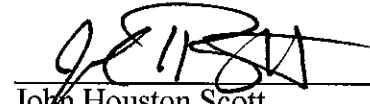

John Houston Scott
Attorney for Plaintiffs

EXHIBIT A

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15 DESANTIS, deceased, and as Guardian Ad)
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16 TIMOTHY FARRELL, a minor,)

17 Plaintiffs,
18 v.)

19 CITY OF SANTA ROSA, JERRY)
SOARES, RICH CELLI, TRAVIS MENKE,)
20 PATRICIA MANN and DOES 1 through)
25, inclusive,)

21 Defendants.)
22

Case No. C07 3386

**DECLARATION OF PATRICIA
DESANTIS RE COMMENCEMENT OF
ACTION BY SUCCESSOR IN INTEREST**

[C.C.P. § 377.32]

23
24 I, Patricia DeSantis, declare as follows:

25 1. The decedent, Richard DeSantis, was my husband at the time of his death. A true and
26 correct copy of our marriage certificate is attached hereto as **Exhibit A**. He was shot and killed by
27 police officers outside of our home in Santa Rosa, California during the early morning hours of April
28

1 9, 2007.

2 2. No proceeding is now pending in California for administration of the decedent's
3 estate.

4 3. I am the decedent's successor in interest as defined by California Code of Civil
5 Procedure § 377.11 because I am the beneficiary of the decedent's estate as defined by California
6 Code of Civil Procedure § 377.10(b).

7 4. No other person has a superior right to bring this action or to be substituted for the
8 decedent in the pending action.

9 I declare under the penalty of perjury under the laws of the state of California that the
10 foregoing is true and correct. Executed on this ____ day of August, 2007.

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13 By: _____
14 Patricia DeSantis
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2. No proceeding is now pending in California for administration of the decedent's estate.

3. I am the decedent's successor in interest as defined by California Code of Civil Procedure § 271.11 because I am the beneficiary of the decedent's estate as defined by California Code of Civil Procedure § 271.10(b).

4. No other person has a superior right to bring this action or to be substituted for the decedent in the pending action.

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed on this 22nd day of August, 2007.

By: Patricia DeSantis
Patricia DeSantis

EXHIBIT A

STATE OF CALIFORNIA

CERTIFICATION OF VITAL RECORD

COUNTY of SOLANO

LICENSE AND CERTIFICATE OF MARRIAGE

NEW MARRIAGE

STATE FILE NUMBER		MUST BE LEGIBLE - MAKE NO ERASURES, WHITEOUTS OR OTHER ALTERATIONS		LOCAL REGISTRATION NUMBER	
GROOM PERSONAL DATA	1A. NAME OF GROOM - FIRST (GIVEN)	1B. MIDDLE	1C. LAST (FAMILY)		2. DATE OF BIRTH - MONTH, DAY, YEAR
	RICHARD	TIMOTHY	DESANTIS		01/21/1977
	3A. RESIDENCE - STREET AND NUMBER	3B. CITY	3C. ZIP CODE	3D. COUNTY - OUTSIDE CALIFORNIA, ENTER STATE	4. STATE OF BIRTH
	17 ROCKWOOD COURT	VALLEJO	94591	SOLANO	TX
	5. MAILING ADDRESS - IF DIFFERENT	6. NUMBER OF PREVIOUS MARRIAGES	7A. LAST MARRIAGE ENDED BY: <input type="checkbox"/> DEATH <input type="checkbox"/> DISSOLUTION <input type="checkbox"/> ANNULMENT		7B. DATE - MONTH, DAY, YEAR
8. USUAL OCCUPATION	8B. USUAL KIND OF BUSINESS OR INDUSTRY		9. EDUCATION - YEARS COMPLETED		
PERSONAL AIDE	ADULT CARE		12		
10A. FULL NAME OF FATHER	10B. STATE OF BIRTH	11A. FULL MAIDEN NAME OF MOTHER		11B. STATE OF BIRTH	
DAN ANTHONY DESANTIS	SAUDI ARABIA	ADRIANNE KIRK PERRINE		CA	
BRIDE PERSONAL DATA	12A. NAME OF BRIDE - FIRST (GIVEN)	12B. MIDDLE	12C. CURRENT LAST (FAMILY)		12D. MAIDEN LAST (FAMILY) (IF DIFFERENT THAN 12C)
	PATRICIA	DAWN	BARRELL		13. DATE OF BIRTH - MONTH, DAY, YEAR
	14A. RESIDENCE - STREET AND NUMBER	14B. CITY	14C. ZIP CODE	14D. COUNTY - OUTSIDE CALIFORNIA, ENTER STATE	15. STATE OF BIRTH
	17 ROCKWOOD COURT	VALLEJO	94591	SOLANO	CA
	16. MAILING ADDRESS - IF DIFFERENT	17. NUMBER OF PREVIOUS MARRIAGES	18A. LAST MARRIAGE ENDED BY: <input type="checkbox"/> DEATH <input type="checkbox"/> DISSOLUTION <input type="checkbox"/> ANNULMENT		18B. DATE - MONTH, DAY, YEAR
19A. USUAL OCCUPATION	19B. USUAL KIND OF BUSINESS OR INDUSTRY		20. EDUCATION - YEARS COMPLETED		
SEAMSTRESS	DRY CLEANING		13		
21A. FULL NAME OF FATHER	21B. STATE OF BIRTH	22A. FULL MAIDEN NAME OF MOTHER		22B. STATE OF BIRTH	
MICHAEL ANTHONY BARRELL	CA	BARBARA DANIELLE MARTIN		GERMANY	
AFFIDAVIT	WE, THE UNDERSIGNED, AN UNMARRIED MAN AND WOMAN, STATE THAT THE FOREGOING INFORMATION IS CORRECT AND TRUE TO THE BEST OF OUR KNOWLEDGE AND BELIEF, THAT NO LEGAL OBJECTION TO THE MARRIAGE NOR TO THE ISSUANCE OF A LICENSE IS KNOWN TO US, AND HEREBY APPLY FOR A LICENSE AND CERTIFICATE OF MARRIAGE.				
	23. SIGNATURE OF GROOM		24. SIGNATURE OF BRIDE		
Richard J. Desantis		Patricia D. Barrell			
LICENSE TO MARRY	AUTHORIZATION AND LICENSE IS HEREBY GIVEN TO ANY PERSON DULY AUTHORIZED BY THE LAWS OF THE STATE OF CALIFORNIA TO PERFORM A MARRIAGE CEREMONY WITHIN THE STATE OF CALIFORNIA TO SOLEMNIZE THE MARRIAGE OF THE ABOVE NAMED PERSONS. REQUIRED CONSENTS FOR THE ISSUANCE OF THIS LICENSE ARE ON FILE.				
	25A. ISSUE DATE MONTH, DAY, YEAR	25B. LICENSE EXPIRES AFTER MONTH, DAY, YEAR	25C. LICENSE NUMBER	25D. COUNTY OF ISSUE	
12/18/1998	03/18/1999	8-19848001591	SOLANO		
WITNESS(ES) (ONE REQUIRED)	26A. SIGNATURE OF WITNESS		26B. ADDRESS - STREET AND NUMBER		26C. CITY, STATE AND ZIP CODE
	Adrienne Desantis		2208 Elliott Drive		American Canyon, California 94599
	27A. SIGNATURE OF WITNESS		27B. ADDRESS - STREET AND NUMBER		27C. CITY, STATE AND ZIP CODE
Michael Barrell		1104 South Bluff Drive		Roseville CA 95678	
CERTIFICATION OF PERSON SOLEMNIZING MARRIAGE	28. I HEREBY CERTIFY THAT THE ABOVE NAMED BRIDE AND GROOM WERE JOINED BY ME IN MARRIAGE IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA:		29A. SIGNATURE OF PERSON SOLEMNIZING MARRIAGE		29B. RELIGIOUS DENOMINATION OF CLERGY
	ON	12	18	98	---
	MONTH	DAY	YEAR	29C. NAME OF PERSON SOLEMNIZING MARRIAGE (TYPE OR PRINT)	29D. OFFICIAL TITLE
	AT	FAIRFIELD	SOLANO	CALIFORNIA	C. COMMISSIONER
30A. SIGNATURE OF LOCAL REGISTRAR	30B. SIGNATURE OF DEPUTY (IF APPLICABLE)		31. DATE ACCEPTED FOR REGISTRATION		
Robert Blechschmidt	Paul Darden		12/18/1998		

112948

CERTIFIED COPY OF VITAL RECORDS
STATE OF CALIFORNIA, COUNTY OF SOLANO

This is a true and exact reproduction of the document officially registered and placed on file in the office of the SOLANO COUNTY ASSESSOR/RECORDER.

Robert Blechschmidt
ROBERT BLECHSCHMIDT
COUNTY ASSESSOR/RECORDER

By: [Signature] Deputy, DATE ISSUED 12-18-1998

This copy is not valid unless prepared on an engraved border displaying the seal, date of issuance and the original signature of the Deputy.

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE